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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY  
WASHINGTON, D.C.  
KNOXVILLE, TENNESSEE  
HUNTSVILLE, TENNESSEE  
JOHNSON CITY, TENNESSEE  
HENDERSONVILLE, TENNESSEE

C. MICHAEL NORTON

December 22, 1993

VIA HAND DELIVERY

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Secretary  
Federal Communication Commission  
1919 M Street  
Washington, D.C. 20554

RE: Response to Order to Show Cause  
MM Docket No. 93-28

Dear Sir:

Enclosed herewith is an original and five (5) copies of the Response of Franklin Communications, Inc. to the Order of Show Cause in this proceeding. For your information, Franklin Communications, Inc., filed a "short form" application (Form 316) for assignment of the licenses of WMTN (AM)/WMXX (FM), Morristown, Tennessee, to Newport Publishing Company, its affiliate, on December 9, 1993 (File Nos: BAL 931209GKV and BALH 9312096J), which applications are currently pending.

Please direct any questions you might have to the undersigned.

Sincerely,

*C. Michael Norton*  
C. Michael Norton

CMN/dw  
Enclosures

cc: Franklin Communications, Inc.

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DEC 23 1993

**BEFORE THE  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matter of )

Amendment of Section 73.202  
FM Table of Assignments  
(Colonial Heights, Tennessee)

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MM Docket No. 93-28  
RM-8172

DOCKET FILE COPY ORIGINAL

To: Chief, Policy and Rules Division

**RESPONSE TO ORDER TO SHOW CAUSE**

Franklin Communications, Inc., licensee of FM Radio Station WMXX, Morristown, Tennessee ("Franklin"), by its attorneys, hereby responds to the Order to Show Cause released in this proceeding by the Federal Communications Commission ("FCC") on November 2, 1993. 58 FR 59431. Therein, the FCC directs Franklin to show cause why its license should not be modified to specify operation on Channel 231A rather than the present 240A. In response thereto, Franklin would show as follows:

**Background**

1. In response to a Petition for Rulemaking filed by Murray Communications, permittee of a new FM broadcast station to operate on Channel 290A at Colonial Heights, Tennessee ("Murray"), the FCC issued its Notice of Proposed Rulemaking (DA 93-182), proposing to substitute Channel 290C3 for Channel 290A at Colonial Heights.\* Apparently, not pleased with either the Class A channel originally granted or the upgrade to C3 status, Murray now seeks to upgrade to C2 status, and filed its Comments and

\*Franklin is not familiar with Colonial Heights, Tennessee, but assumes that it refers to an unincorporated portion of Sullivan County, Tennessee, generally referred to by that name.

Counterproposal on or about May 7, 1993. Therein, Murray seeks authority to operate at 240C2, but to do so requires not less than three (3) other operating stations to change their frequencies, and a fourth station to relocate its transmitter to clear a short-spacing problem. Murray filed with the FCC what would appear to be short letter agreements with two of these stations (including the short-spaced station) agreeing to the proposed changes.

2. Murray did not contact Franklin at any time seeking its consent to these proposed changes, but rather seeks that change involuntarily. At the same time, Murray asks the FCC to require Radio Station WCTU in Tazewell, Tennessee to change from Channel 231A to 290A.

### **Opposition**

3. The Commission has held that economic injury to a Commission licensee is a relevant consideration insofar as it affects the public interest rather than the private interest of the licensee. In re Amendment of Section 73.202, Table of Assignments (Leitchfield, Ky. et al.), 9 R.R.2d 1579 (1967). The Commission has also recognized that changing frequencies can cause substantial disruptions to a station's business, cause a significant amount of confusion to the public, and result in disruptions to listening habits and losses of audience. These are legitimate concerns to the Commission in its decision as to whether or not to order frequency changes to accommodate an upgrade of existing facilities. In Re Amendment of Section 73.202(b), Table Of Assignments (Columbus, Nebraska et al.), 59 R.R.2d 1184 (1986). ("In summary, we do not believe it is in the public interest to have the service of several stations disrupted in order to accomodate one station expanding its service area.")

4. This case would cause a serious disruption of service to Franklin. This is not simply a request that Franklin change frequencies, but rather that Franklin change to the frequency of one of its competitors. The proposal calls for Franklin to change to channel 231A, the existing frequency for the Tazewell, Tennessee station (which would at the same time change to 290A). Tazewell is about 53 kilometers from Morristown, and as a result there is a large coverage overlap between the two stations (the Tazewell station can be heard in Morristown). The effect of the change would be to require Franklin not only to change its frequency, but to change to the frequency of another station in its same market. Not only would this cause listener confusion, many listeners would no doubt presume that Franklin was the Tazewell broadcaster since it would be broadcasting on the same frequency. Franklin must then assume whatever reputation and opinions held by listeners and advertisers have about the Tazewell station. These adverse circumstances should clearly outweigh the slight advantage to Murray from increasing its signal from C3 to C2 status.

5. If required to change its frequency, Franklin will incur substantial expenses in making the conversion and attempting to retain its audience base. It has for the last three years called itself "K-96," which would not longer be accurate. It will have to change billboards, signs, and vehicle logos, as well as stationary and other documents. It will have no choice but to promote the new frequency with newspaper, direct mail, billboard advertising, and promotional materials, which it conservatively believes would cost \$15,000. To reiterate, Franklin would have no choice but to expend these funds in order to retain its audience and its advertisers. In addition, there would be substantial equipment expenditures necessary to make the change.

6. Franklin knows nothing about Murray Communications. It believes that the construction permit for the station was granted in November, 1992, but that Murray has not to this date put the station on the air. No one representing Murray has contacted the management of Franklin to discuss this matter. Franklin is particularly concerned that Murray plans to incur major expenses in having three (3) other stations change frequencies and a fourth (4th) move its transmitter. Given the fact that Murray has yet to put the proposed station on the air, Franklin has no way to know if Murray has the funds necessary to plan for the necessary expenses, or whether or not Murray will agree with Franklin's determination of its expenses, and how long it will take Franklin to recover the funds it expends. At minimum, as a condition to its proposal, the funds for the necessary reimbursement should be placed in escrow with a third party to secure Franklin's position. In the Columbus, Nebraska matter, supra, the Commissioner said, "Having the necessary funds available and placed in escrow would be a reasonable request by an affected station." Franklin estimates that its conversion expenses will be at least \$25,500.

7. The Commission has in the past expressed reluctance to have a licensee reimbursed for lost revenues due to being off the air in order to accomplish a frequency change because of the speculative nature of these losses. Franklin, however, has first hand knowledge of the cost to a station from being off the air. In 1991 a construction accident knocked over the tower of its station, causing serious economic damage to the licensee during the three days it was off the air. Franklin ultimately recovered some \$15,000 for its damages representing its losses. The fact that it would be off the air to change frequencies certain will produce the same type of economic harm, and should be compensated.

### **Conclusion**

For the reasons set out above, Franklin requests that the FCC conclude that the public interest is not served by the substantial and expensive channel changes called for in this proposal. If the FCC concludes that the changes should be made, Franklin requests that Murray be required to place in escrow at least \$25,500 as security for the payment of expenses to be incurred by Franklin. Finally, Franklin asks that it be permitted to recover an amount representing its lost revenues during any period it is off the air due to the change.

Respectfully submitted,

FRANKLIN COMMUNICATIONS, INC.

By: C. Michael Norton  
C. Michael Norton  
Its Attorney

Baker, Worthington, Crossley, Stansberry & Woolf  
1700 Nashville City Center  
Nashville, Tennessee 37219

December 22, 1993

**CERTIFICATE OF SERVICE**

I, C. Michael Norton, certify that I have this 22<sup>nd</sup> day of December, 1993, sent by regular United States mail, postage prepaid, a copy of the foregoing Response to Order to Show Cause to:

Timothy K. Brady  
P.O. Box 986  
Brentwood, TN 37024-0986

C. Michael Norton  
C. Michael Norton